

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LEMONGAS ENTERPRISES, INC., *et al.*

Case No. 1:23-cv-0404 JLT CDB

Plaintiffs,

v.

THE CITY OF BAKERSFIELD, *et al.*

Defendants.

ORDER ADOPTING IN PART
FINDINGS AND RECOMMENDATIONS
GRANTING THE MOTION TO DISMISS
BY THE CITY OF BAKERSFIELD AND
CITY OF BAKERSFIELD POLICE
DEPARTMENT WITHOUT LEAVE TO
AMEND
(Doc. 20)

ORDER TO PLAINTIFFS TO SHOW CAUSE
WHY THE ACTION AS TO THE BUREAU
OF LAND MANAGEMENT SHOULD NOT
BE DISMISSED; ORDER STRIKING THE
PROOF OF SERVICE AS TO THE BUREAU
OF LAND MANAGEMENT

Lemongas Enterprises, Inc. and Randeep S. Dhillon initiated this action by filing a complaint against the City of Bakersfield, Bakersfield Police Department, and the U.S. Department of Interior, Bureau of Land Management. (Doc. 1). The City and BPD filed a motion to dismiss pursuant to Fed. R. Civ. Pro. 12(b)(1) and 12(b)(6), motion to strike pursuant to Fed. R. Civ. Pro. 12(f), and a request for judicial notice. (Docs. 10-11.)

The assigned magistrate judge found this Court lacks subject matter jurisdiction over the action. (Doc. 20.) Therefore, the magistrate judge recommended the motion to dismiss under Rule 12(b)(1) be granted and the remaining motions be denied as moot. (*Id.* at 3-7.) In addition,

1 the magistrate judge found leave to amend would be futile because the identified defects could
2 not be cured with amendment, and recommended dismissal be without leave to amend. (*Id.* at 7.)

3 The Findings and Recommendations were served on June 29, 2023, and it notified the
4 parties that any objections must be filed within 14 days of the date of service. (Doc. 20 at 8.)
5 The Court also informed the Plaintiffs that the “failure to file objections within the specified time
6 may waive the right to appeal the District Court’s order.” (*Id.*, citing *Wilkerson v. Wheeler*, 772
7 F.3d 834, 839 (9th Cir. 2014); *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991).)
8 Plaintiffs did not file objections or otherwise respond to the Findings and Recommendations, and
9 the deadline to do so has passed.

10 Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court conducted a *de novo* review. Having
11 carefully reviewed the entire matter, the Court concludes the Findings and Recommendations are
12 supported by the record and by proper analysis as to the motions filed by the City of Bakersfield
13 and the Bakersfield Police Department.

14 However, the Court disagrees that amendment of the complaint as to the Bureau of Land
15 Management is futile. Even still, the Court expresses significant doubt as to whether the
16 complaint can be cured. First, as noted in the Findings and Recommendations, the Bureau of Land
17 Management is not a proper party to this action. (*Kennedy v. U.S. Postal Serv.*, 145 F.3d 1077
18 (1998)). Second, even if the BLM were a proper party—and it is not—there are no factual
19 allegations as to this defendant that could give rise to liability. The thrust of the complaint is the
20 damage inflicted on the subject property by the Bakersfield Police Department. (Doc. 1 at 5, ¶¶
21 19-26) At most, the complaint asserts that the subject property was surrounded by agricultural and
22 forest land, but exactly how this implicates the Bureau of Land Management is not explained by
23 factual allegation or by reference to any regulation or statute defining the scope of the agency’s
24 authority. Finally, the plaintiff has failed to serve the summons and complaint properly. Fed. R.
25 Civ. P. 4(i). Accordingly, the Court **ORDERS**:

26 1. The Findings and Recommendations dated June 29, 2023 (Doc. 20) as to the City
27 of Bakersfield and the Bakersfield Police Department are **ADOPTED** in full.
28

IT IS SO ORDERED.

Dated: July 18, 2023

Jennifer L. Thurston
UNITED STATES DISTRICT JUDGE